



HARMONIZED SYSTEM  
REVIEW SUB-COMMITTEE

NR0352E1  
(+ Annex)

-  
27<sup>th</sup> Session  
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O. Eng.

Brussels, 27 January 2003.

POSSIBLE AMENDMENT OF SUBHEADING 0406.40 TO COVER

ALL "BLUE-VEINED" AND SIMILAR CHEESE

(Item III.B.1 on Agenda)

Reference documents :

NC0553E1 (HSC/29)  
NC0644E1 (HSC/30)

NC0655E2, Annex H/2 (HSC/30 – Report)

I. BACKGROUND

1. When this issue was discussed at the 30<sup>th</sup> Session (November 2002) of the Harmonized System Committee, the **US** Delegate indicated that his administration was aware that a mutant strain, *Penicillium roqueforti PW1*, could be used to produce cheese with a greyish pigmentation, and that this cheese was very similar to blue-veined cheese. However, the legal texts of the Harmonized System had to be followed. The legal text to subheading 0406.40 was very clear, and classifying anything else than cheese with blue veins in that subheading would run counter to that legal text. His administration had reviewed several French dictionaries, and in the context of cheese, the term "persillée" (literally meaning "parsleyed") always referred to cheese with blue or green veins. Cheese with similar characteristics, but not being blue- or green-veined, therefore had to be classified outside subheading 0406.40. His administration was therefore against the proposed Subheading Explanatory Note which would result in a transfer of goods, entailing legal and administrative problems. He was not necessarily against a change in the scope of the subheading, but maintained that such a change could be effected only through a legal text amendment. The Committee should therefore consider sending this issue to the Review Sub-Committee for consideration.

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2. The EC Delegate pointed out that this issue was both easy and complicated at the same time. He agreed that there was a difference in terminology in the French and English texts to subheading 0406.40, but was of the view that the scope was the same in both languages. According to producers, “blue-veined cheese” was a trade name which did not necessarily refer to the colour of the cheese, but referred to the manufacturing process involved which was the important factor here. He was therefore of the opinion that cheese with grey or white veins should also be classified in subheading 0406.40.
3. Another delegate, supporting the United States, pointed out that this issue seemed to stem from the EC’s own Explanatory Notes which appeared to have gone one step further than the HS Nomenclature.
4. The Delegate of Canada underlined that the important question before the Committee was whether “blue-veined cheese” only covered cheese with blue veins. He referred to a terminology database which defined “blue-veined cheese” as “a general class of cheese on the market known as blue-veined cheese ... because the curd containing lactic acid organisms was inoculated with a selected species of blue-green mould *Penicillium roqueforti* which growth gave a green streaked or marbled appearance”. He therefore concluded that such cheese did not necessarily have to be blue.
5. After further discussion the Committee concluded that it was not possible to reach agreement as to the proposed Subheading Explanatory Note. The Director pointed out that the status quo was not an acceptable state of affairs, since this situation would not assure uniform classification of the cheese at issue throughout the world. He therefore proposed to submit this issue to the Review Sub-Committee for consideration.
6. The Committee agreed with this approach and instructed the Secretariat to submit a proposal to the RSC which would ensure that these cheeses could be classified in the same subheading irrespective of their colour.

## II. SECRETARIAT COMMENTS

7. Based on the discussion referred to above, the Secretariat has the impression that both the English speaking and the French speaking Members of the HS Committee were more or less pleased with the present state of the two texts of subheading 0406.40 (“Blue-veined cheese”/“Fromages à pâte persillée”) – even though it was agreed that these texts were not completely aligned. A study carried out by the Secretariat (see Doc. NC0553E1, paragraph 15) had also concluded that the existing legal situation was satisfactory with regard to the subheading texts themselves. However, to make the legal situation completely clear, and in order to avoid any transfer of goods within heading 04.06, the Secretariat is of the opinion that the insertion of a Subheading Note to define the precise scope of subheading 0406.40 would be the best approach to securing uniform classification.
8. In its initial proposal the EC suggested to insert a Subheading Explanatory Note to ensure the uniform application of this subheading text. The Secretariat has examined this proposal and has come to the conclusion that this text could serve as a basis for the new Subheading Note. However, for the sake of consistency, and since the cheese at issue can also contain green or blue/green pigmentation a reference to such cheese has been included in the proposal. The proposed new Subheading Note is set out in the Annex to this document.

III. CONCLUSION

9. The Sub-Committee is invited to examine the proposal set out in the Annex, taking into account the comments made by the Secretariat above.

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